IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.3520 OF 2005

Mr.S.H.Joshi for the Petitioner.

Mr.Rajiv Patil for the Respondent.

Office Notes, Office Memoranda of Coram, appearances, Court's order or directions	Court's or Judge's orders
	CORAM: D.K.DESHMUKH, J.
	DATED: 5th October,2005
P.C.:	
Rule. Returnable forthwith. Heard finally by consent of parties.	
2. Admittedly, the suit has not yet been tried. Issues are yet to be framed. Trial is yet to go on. There is no provision under the Civil Procedure Code under which this order could be made by the court at this stage. This order could not have been made under Section 9A of the CPC, because order under Section 9A can be made only if there is a claim made for interim	

relief before the court.

3. Looking from any point of view, in my opinion, the order impugned in the petition is liable to be set aside. Petition is, therefore, allowed. Rule is made absolute in terms of prayer clause (a). It is clarified that it is open to the Defendant to raise this contention in the written statement and if such contention is raised, the trial court shall frame an issue and decide it afresh in accordance with law. No order as to costs.

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